

**B R E W E R**  
ATTORNEYS & COUNSELORS

December 17, 2019

**VIA ECF**

Hon. Christian F. Hummel  
United States Magistrate Judge  
United States District Court  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, New York 12207

Re: *National Rifle Association of America v. Cuomo*, No. 18-cv-00566-TJM-CFH

Dear Judge Hummel:

My firm represents Plaintiff the National Rifle Association of America in this matter. Following up on the discussion during the December 4, 2019 conference before Your Honor, I write regarding ways to expedite the Special Master's review of documents withheld by Defendants and their privilege log. Of course, these suggestions would need the approval of Your Honor and the Special Master. I shared an earlier version of this letter with counsel for Defendants, in the hopes of achieving some consensus, but we were not able to reach agreement.

In short, we recommend that the parties meet (either in person or telephonically) with the Special Master, as well as submit short briefings and make arguments on determinative issues, so that the Special Master can make informed decisions in his report and recommendation to Your Honor. Although not every document and privilege log entry should be briefed and argued, the Special Master may appreciate input from the parties on categories of privilege log entries and documents, or on issues going to the applicability of certain privileges and "whether [privileged] documents should still be released."<sup>1</sup>

We believe that the parties' input to the Special Master would be helpful to him in completing his recommendations to Your Honor and would permit the parties to more narrowly focus and potentially minimize their objections to the Special Master's recommendation. That will enable Your Honor to review a clean "record" when reviewing the Special Master's recommendation and the parties' objections.

As mentioned, an earlier version of this letter—which included verbatim the above two paragraphs—was shared with counsel for Defendants on December 11, 2019. William Scott responded for Defendants on December 13, 2019, and Mr. Scott's email is attached. Mr. Scott does not appear to be opposed to briefing legal issues before the Special Master, and the Special Master can determine whether one or more sets of briefing is most helpful to his review. However, Mr.

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<sup>1</sup> See ECF No. 141 at 3 (Order Appointing Special Master).

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Scott's suggestion that his clients answer the Special Master's questions about the content of the documents requires additional clarification. Assuming Mr. Scott is not suggesting *ex parte* communication with the Special Master—to which Plaintiff does not consent—sessions with the Special Master either in person or telephonically will be needed in any event.

On a more fundamental level, Plaintiff needs to see Defendants' privilege log in order for there to be a full and fair opportunity to engage with the Special Master before his recommendations to this Court. The privilege log itself is not privileged, and an opposing party is entitled to see it in order to effectively litigate privilege issues. If Plaintiff's suggestions above are implemented by the Special Master to any degree, along with Plaintiff's access to the privilege log, it will enable Plaintiff to assert more targeted objections to the Special Master's recommendations.

We are available for a brief telephonic conference regarding this letter, if Your Honor believes such a conference would be helpful to consideration of these issues, at the Court's earliest convenience.

Respectfully,



John Canoni

Attachment

cc: All Counsel of Record (via ECF)

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**From:** Scott, William <William.Scott@ag.ny.gov>  
**Sent:** Friday, December 13, 2019 2:04 PM  
**To:** John Canoni; Debbie Greenberger  
**Cc:** William Brewer; Sarah Rogers; Brittany Siscoe  
**Subject:** RE: NRA v. Cuomo - Proposed letter to Judge Hummel regarding Special Master

John,  
Thanks for getting us a copy of your proposal to review. I think that the process you outline has the potential to overly complicate and delay the special master's review. Instead I would suggest that we simply advise the special master that if he has questions about the content of the documents, those questions can be addressed by my clients, and if he has questions about any legal arguments, that do not require reference to the contents of the documents, it may be more efficient to address all such questions at once as compared to multiple brief submissions.

Bill

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**From:** John Canoni <jjc@brewerattorneys.com>  
**Sent:** Wednesday, December 11, 2019 10:49 AM  
**To:** Scott, William <William.Scott@ag.ny.gov>; Debbie Greenberger <dgreenberger@ecbalaw.com>  
**Cc:** William Brewer <WAB@brewerattorneys.com>; Sarah Rogers <sbr@BrewerAttorneys.com>; Brittany Siscoe <bls@brewerattorneys.com>  
**Subject:** NRA v. Cuomo - Proposed letter to Judge Hummel regarding Special Master

[EXTERNAL]

Bill and Debbie: Please see the attached and let me know if you have minor edits and/or your consent to the letter being submitted jointly.

I would appreciate a response by the end of the day if possible.

Regards.

John

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